STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED April 4, 2000
v	No. 212118 Wayne Circuit Court
ROBERT GILBERT, Defendant-Appellant.	LC No. 97-008077

Before: Neff, P.J., and Sawyer and Saad, JJ.

PER CURIAM.

The court convicted defendant of involuntary manslaughter, MCL 750.321; MSA 28.553, and sentenced him to 3½ to 15 years' imprisonment. Defendant appeals as of right, and we affirm.

Defendant says there was insufficient evidence to support his conviction. We disagree. We review claims of insufficient evidence in the light most favorable to the prosecution and determine if there was sufficient evidence to justify a rational trier of fact in finding guilt beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748, amended 441 Mich 1201 (1992); *People v Hutner*, 209 Mich App 280, 282; 530 NW2d 174 (1995).

To convict a defendant of involuntary manslaughter, a prosecutor must prove that a legal duty existed, that the defendant had the ability to perform the duty, that the defendant wilfully neglected or failed to perform the duty, and that death was a direct and immediate consequence of the failure to act. *People v Sealy*, 136 Mich App 168, 172; 356 NW2d 614 (1984). Evidence of gross negligence must be presented to convict a defendant of involuntary manslaughter. *People v Clark*, 453 Mich 572, 578; 556 NW2d 820 (1996). Gross negligence requires knowledge of a situation requiring the exercise of ordinary care, the ability to exercise ordinary care to avoid the harm, and the failure to use such care to avert the danger when it is apparent that the result would prove disastrous to another. *Id.*, 578 n 4.

Under some circumstances, a defendant can be charged with manslaughter if the omission of a legal duty results in the death of the person to whom the duty is owed. *People v Beardsley*, 150 Mich 206, 208; 113 NW 1128 (1907). A legal duty is required, however, and not a mere moral obligation.

Id. A parent-child relationship gives rise to a legal duty, and a parent must make reasonable efforts to rescue his or her child from life-threatening dangers if it can be done safely. *Id*. (citation omitted).

Defendant contends that he did not violate a legal duty because no legal duty required him to enter the burning car to save his daughter. However, the evidence presented at trial showed that the car emitted smoke for quite some time prior to igniting. The car was on the side of freeway with smoke coming out of the passenger compartment. The hood had been raised, and defendant was leaning over the engine. He had already removed the two boys from the car. He walked over to one of the boys, stood on the embankment, and looked at the car for about one minute. McCaa testified that the car was smoking for about ten minutes before finally catching on fire. The evidence showed that defendant had ample time to get his daughter out of the car before the flames made it injurious to himself to do so.

Defendant also alleges that there was insufficient evidence presented to establish that he was grossly negligent. Defendant was aware that the situation required him to get his daughter out of the vehicle because he had removed his two sons from the car and purportedly took efforts to remove her as well. Defendant had the ability to use ordinary care to avoid the threatened danger. He could have made more of an effort to get his daughter out of the vehicle before it became totally engulfed in flames and could have informed McCaa and Buchanan that she was inside the car. Ordinary care required defendant to make at least some effort to get his daughter out of the vehicle. Defendant, however, neglected to make any effort. He was grossly negligent by failing to use ordinary care to avoid the obviously dangerous situation.

Defendant further argues fallaciously that there was insufficient evidence that he directly caused his daughter's death. It was stipulated at trial that soot and smoke inhalation caused her death. The soot and smoke inhalation was a direct and immediate result of defendant's failure to remove her from the car. This evidence was sufficient to justify the trial court in concluding that she died as a result of defendant's failure to remove her from the smoking vehicle.

Defendant also asserts that the trial court erred in finding that he had a legal duty to enter the burning vehicle in an effort to rescue his daughter. We review a trial court's findings of fact for clear error. *People v Parker*, 230 Mich App 337, 338; 584 NW2d 336 (1998). A finding of fact is clearly erroneous if, after review, this Court is left with a definite and firm conviction that a mistake has been made. *Id.*, 338.

When presiding over a bench trial, a judge must decide the facts from the evidence presented and apply the law to those facts. *People v Cazal*, 412 Mich 680, 689; 316 NW2d 705 (1982). A judge must articulate the facts on the record along with conclusions of law in determining the outcome. *Id.*, 689; MCR 2.517(A). A trial court's factual findings are sufficient if it appears that the court was aware of the factual issues and correctly applied the law. *People v Legg*, 197 Mich App 131, 134; 494 NW2d 797 (1992); *People v Edwards*, 171 Mich App 613, 620; 431 NW2d 83 (1988).

Defendant incorrectly contends that the trial court held that the standard of care required defendant to take all possible steps to save his daughter regardless of his personal safety. The trial court did not find that the standard of care required defendant to make heroic efforts to try to get his daughter

out of the car. Instead, the court did not believe defendant's statement to police that he made efforts to rescue her. Clearly, the trial court did not conclude that defendant had a legal duty to enter the burning vehicle; the court did find that he failed to attempt to remove his daughter as the standard of care required. Because the trial court was aware of the factual issues and correctly applied the law, its findings were not clearly erroneous. *Legg, supra* at 134; *Edwards, supra* at 620.

Affirmed.

/s/ Janet T. Neff
/s/ David H. Sawyer
/s/ Henry William Saad